

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

**EVA ROBERTS,**  
*Plaintiff,*

v.

**RUCKER RESTAURANT  
HOLDINGS LLC and  
RRH-AUSTIN, LLC,**  
*Defendants.*

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**CIVIL ACTION NO. 1:19-CV-855**

**DEFENDANTS' NOTICE OF REMOVAL**

TO THE HONORABLE JUDGE OF SAID COURT:

Now come Defendants **RUCKER RESTAURANT HOLDINGS LLC and RRH-AUSTIN, LLC** (herein "Defendants") pursuant to 28 U.S.C.A. §§ 1332, 1441 and 1446, and give notice to this Court of the removal of the case styled: *Eva Roberts v. Rucker Restaurant Holdings LLC and RRH-Austin, LLC*, Cause Number D-1-GN-19-004305 in the District Court, 201<sup>st</sup> Judicial District of Travis County, Texas ("Lawsuit") to the United States District for the Western District of Texas, Austin Division, and respectfully shows as follows:

**The Parties & Procedural History**

1. Eva Roberts ("Plaintiff") filed her Original Petition styled: *Eva Roberts v. Rucker Restaurant Holdings LLC and RRH-Austin, LLC*, Cause Number D-1-GN-19-004305 on July 25, 2019 in the 201<sup>st</sup> Judicial District Court of Travis County, Texas. In her Lawsuit, Plaintiff makes allegations of negligence against the Defendants and pleads "Plaintiff seeks monetary relief of over \$1,000,000," exclusive of interest and costs, satisfying 28 U.S.C §1332(a). See Plaintiff's Original Petition included in Exhibit A.

2. Defendant Rucker Restaurant Holdings LLC was served with the Lawsuit by service on the Secretary of State of Texas on July 31, 2019. Defendant RRH AUSTIN, LLC has not been served but both Defendants filed a timely Answer and entered an appearance in the Lawsuit.

3. The State Court Petition alleges that Plaintiff, Eva Roberts is an individual who is a resident of Texas. The State Court Petition further alleges that both Defendant RRH-Austin, LLC and Defendant Rucker Restaurant Holdings, LLC are foreign corporations with their principal place of business being in Mesa, Arizona, thereby establishing diversity of the parties in this case.

**Removal Based on Diversity Jurisdiction**

4. Defendants file this Notice of Removal as required by 28 U.S.C § 1446, removing this case to the U.S. District Court for the Western District of Texas, Austin Division because it falls within this Court's diversity subject-matter jurisdiction under 28 U.S.C. § 1332.

5. Defendants' filing of this Notice of Removal is timely under 28 U.S.C. § 1446(b) because the Lawsuit and citation in this action were first served on July 31, 2019, by service upon Defendant Rucker Restaurant Holdings LLC, making the last day to remove August 30, 2019. Defendant RRH-Austin, LLC, was not served but filed its answer to join in this removal.

6. Removal is proper because it is judicially admitted by Plaintiff that there is complete diversity between the Plaintiff and Defendants and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. *See* 28 U.S.C. § 1332(a):

a) Plaintiff's Original Petition states she is a resident of Williamson County, Texas.<sup>1</sup>

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<sup>1</sup> See Plaintiff's Original Petition included in Exhibit 1.

- b) Plaintiff's Original Petition pleads and thereby judicially admits Defendant RRH-AUSTIN, LLC is a foreign corporation whose principal office is located at 1945 West Main Street, Mesa, Arizona 85201.
- c) Plaintiff's Original Petition pleads and thereby judicially admits Defendant RUCKER RESTAURANT HOLDINGS, LLC is a foreign corporation whose principal office is located at 1945 West Main Street, Mesa, Arizona 85201.<sup>2</sup>
- d) The amount in controversy exceeds \$75,000, excluding interest, costs and attorneys' fees. *See* 28 U.S.C. § 1332(a).

**Venue is Proper**

7. Venue of this removed action is proper in this Court because this district and division embrace the place where the state-court removed action has been pending. 28 U.S.C.A. §1441(a).

**No Waiver**

8. By virtue of this removal petition, Defendants do not waive their right to assert any claims, pleas, or motions, including, if any, pleas in abatement, motions to compel arbitration, and motions permitted by Rule 12 of the Federal Rules of Civil Procedure.

**Defendants Have Met the Other Requirements for Removal**

9. Defendants have complied with all applicable provisions of 28 U.S.C.A. §1441 *et seq.*, the applicable Federal Rules of Civil Procedure, and the Local Rules in this District. Defendant was first served with the Original Petition on July 31, 2019. Therefore, Defendants file this Notice of Removal within the 30-day time-period required by 28 U.S.C. §1446(b).

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<sup>2</sup> Id.

9. Defendants attach hereto those materials required to be filed upon removal in accordance with Rule 81 of the Local Rules for the United States District Court, Western District of Texas. Additionally, the filing fee of \$350.00 has been tendered to the Clerk of the United States District Court for the Western District of Texas, Austin Division, along with the original Notice of Removal.

**Attachments**

10. Pursuant to 28 U.S.C. § 1446(a) and Rule 81, attached are the following documents:

All pleadings, process, orders and all filings in the State Court Action	Exhibit "A"
Copy the State Court Docket Sheet	Exhibit "B"
Index of matters being filed	Exhibit "C"
A list of all counsel of record, including addresses, telephone numbers and parties represented.	Exhibit "D"
A copy of the "Notice to State Court of Removal to Federal Court" (without exhibits) that will be filed with the District Clerk of Travis County, Texas.	Exhibit "E"

**Notice to State Court**

11. Pursuant to 28 U.S.C. § 1446(d), Defendants shall promptly serve a copy of this Notice of Removal on Plaintiff and shall promptly file a copy of this Notice of Removal with the District Clerk of Travis County, Texas. A copy of the "Notice to State Court of Removal to Federal Court" (without exhibits) that will be filed with the District Clerk of Travis County, Texas is attached as Exhibit "E".

**WHEREFORE, PREMISES CONSIDERED,** Defendants **RUCKER RESTAURANT HOLDINGS LLC AND RRH-AUSTIN, LLC** request that this action be removed from the 201<sup>st</sup> Judicial District Court, Travis County, Texas to the United States District Court for the Western

District of Texas, Austin Division, and that this Court enter such further orders as may be necessary and appropriate.

Respectfully submitted,

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ATTORNEY FOR DEFENDANTS

**RUCKER RESTAURANT HOLDINGS, LLC**

**And RRH-AUSTIN, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 30<sup>th</sup> day of August, I electronically filed the foregoing instrument with the Clerk of the Court using CM/ECF and hereby certify that I have faxed a copy of the above and foregoing, to the following non-CM/ECF participant:

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